COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION CONCERNING THE PROPRIETY OF PROVISION OF INTERLATA SERVICES BY BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996	) CASE NO. 96-608

O R D E R

On March 31, 1997, MCI Telecommunications Corp. and MCIMetro Access Transmission Services, Inc. (collectively "MCI") filed a motion requesting this Commission to take action to ensure that these proceedings conform to the Commission's Order dated December 20, 1996 which initiated this docket. AT&T Communications of the South Central States, Inc. ("AT&T") and Sprint Communications Company L.P. ("Sprint") have filed supporting motions. Movants argue that this Commission should disregard BellSouth Telecommunications, Inc.'s ("BellSouth") Statement of Generally Available Terms ("Statement") filed March 31, 1997, because this action is intended to determine whether BellSouth has fulfilled the requirements of Section 271(c)(1)(A) of the Telecommunications Act of 1996, Pub L. No. 104-104, 110 Stat., 56, 47 U.S.C. 151 et seq. (the "Act") in order to receive this Commission's recommendation that BellSouth should be permitted to provide in-region, interLATA services in Kentucky. The Commission is also requested to alter its procedural schedule, submitted by BellSouth and adopted by this Commission in its March 5, 1997 Order. The procedural schedule, among other things, provides for filing of a Statement of Generally Available Terms and for simultaneous filing of direct testimony

by all parties. BellSouth filed its response to these motions ("BellSouth Response") on April 10, 1997.

As MCI states, there are two methods by which a Bell operating company may satisfy the requirements of Section 271 of the Act. The first, "Track A," appears in subparagraph (c)(1)(A); the second, "Track B," appears in subparagraph (c)(1)(B). Under Track A, BellSouth must show interconnection with a competitor that provides, predominantly over its own facilities, local service to residential and business customers. Track B, available to a Bell operating company which has had no interconnection requests, allows a Bell operating company to submit a Statement of Generally Available Terms. Movants correctly state that the Commission's Order of December 20 requires BellSouth to demonstrate that its entry into the in-region, interLATA market is appropriate under Track A.

BellSouth responds that its Statement "plays a role" in both tracks. BellSouth Response at 2. It also argues that accepting MCI's argument effectively gives the IXCs, with whom BellSouth will compete in the interLATA market, the power of deciding when BellSouth may enter that market. This is so because, according to BellSouth, the carriers most likely to be the facilities-based providers who will provide competition in the local market are the large IXCs. Those IXCs have, says BellSouth, "every incentive" to delay the beginning of facilities-based competition in the local market in order to protect their power in the interLATA market. BellSouth Response at 11. Foreclosing Track A on the theory that no competitor offers facilities-based competition and simultaneously foreclosing Track B on the theory that competitors have requested interconnection could indeed leave

BellSouth at the mercy of the IXCs and delay BellSouth's provision of in-region, interLATA competition as contemplated in the Act.

In its December 20 Order, the Commission signaled its intent to determine whether Track A factors justify BellSouth's entry into the in-region, interLATA market. The Commission disagrees with BellSouth regarding its contention that the Statement of Generally Available Terms is relevant in a Track A proceeding. Moreover, the Commission continues to believe that Track A, rather than Track B, is the appropriate one in Kentucky, for the simple reason that it appears to this Commission that carriers who will provide service predominantly over "their own facilities" after their respective interconnection agreements are finalized have requested interconnection from BellSouth. In the opinion of this Commission, it is not necessary for a carrier literally to build its own facilities in order to be considered "facilities-based." It is sufficient that the carrier requesting interconnection plans to provide service through use of appropriately priced unbundled elements purchased from BellSouth, as opposed to reselling BellSouth service. Defining "facilities-based" carriers to include only those carriers building their own local exchange facilities would indeed subject BellSouth's entry into the interLATA market to the decisions of other carriers which may wish to block BellSouth's entry into the interLATA market through the simple expedient of failing to build. The Act is meant to open all telecommunications markets to competition, and BellSouth unquestionably will provide meaningful interLATA competition.

The Commission will, however, consider BellSouth's Statement in this docket. Although the Commission concludes herein that Track A and Track B are mutually exclusive, and that interconnection requests made by carriers providing residential and business service through use of unbundled elements are sufficient to trigger a Track A

inquiry, the Commission recognizes that these issues have not yet been decided by the Federal Communications Commission ("FCC"), the ultimate decisionmaker in this matter. In particular, the Commission is unaware of any decision of the FCC defining "facilities based carrier" either to include or to exclude carriers providing service through use of unbundled elements purchased from an incumbent local exchange carrier ("ILEC"). Accordingly, because the FCC will ultimately decide whether BellSouth may enter the interLATA market pursuant to Section 271, and because it is this Commission's role to advise the FCC in making that determination, the lawfulness of BellSouth's Statement, as well as appropriateness of BellSouth's entry into the in-region, interLATA market under Track A, will be considered in this proceeding.

Finally, as BellSouth points out, the Commission's current procedural schedule provides intervenors with the opportunity to file rebuttal testimony. Thus, there is no need to alter the schedule to allow the intervenors to file their direct testimony after the filing of BellSouth's.

The Commission, having considered the record and having been otherwise sufficient advised, THEREFORE ORDERS that the motions of MCI, AT&T, and Sprint are hereby denied.

Done at Frankfort, Kentucky, this 16th day of April, 1997.

PUBLIC SERVICE COMMISSION

For the Commission

ATTEST:

Executive Director